

Duffey, Dylan

From: Duffey, Dylan
Sent: Thursday, March 19, 2020 3:40 PM
To: jdillard@kilpatricktownsend.com
Subject: Closing Your Confidentiality Determinations (Tracking No. EPA-HQ-2020-002247 & EPA-HQ-2019-008989)

Dear Mr. Dillard:

EPA's Office of General Counsel ("EPA OGC") was notified that information was withheld as Confidential Business Information ("CBI") under FOIA Exemption 4 in response to your FOIA requests EPA-HQ-2019-009245 and EPA-HQ-2019-004168. Any initial denial based on Exemption 4 is automatically forwarded to EPA OGC for a final confidentiality determination. 40 C.F.R. § 2.204(d).

EPA OGC contacted you on March 5, 2020 attempting to confirm your continued interest in EPA issuing a final confidentiality determination on the withheld information. In its March 5th email to you, EPA OGC requested that you respond within 10 calendar days from the date of its email to confirm your continued interest in proceeding with the confidentiality determination. EPA OGC informed you that it would close this file if you failed to respond.

The time frame for a response has now elapsed. EPA OGC did not receive a response concerning your continued interest in having EPA OGC proceed with the confidentiality determination. Accordingly, pursuant to the notice provided to you in EPA OGC's March 5th email, EPA understands you are no longer interested in having OGC conduct a confidentiality determination and your request for the Exemption 4 information is closed.

Should you have any questions concerning this matter, please contact Dylan Duffey at duffey.dylan@epa.gov or (202)564-3008.

Thank you.

Dylan Duffey
Attorney-Advisor
General Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3008 | duffey.dylan@epa.gov

From: Duffey, Dylan
Sent: Thursday, March 5, 2020 4:40 PM
To: jdillard@kilpatricktownsend.com
Subject: Continued Interest in Confidentiality Determination

Dear Mr. Dillard:

EPA's Office of General Counsel was notified that information was withheld under FOIA Exemption 4 in response to your FOIA requests EPA-HQ-2019-009245 and EPA-HQ-2019-004168.

Exemption 4 of the FOIA exempts from disclosure “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” 5 U.S.C. § 552(b)(4). In order for information to meet the requirements of Exemption 4, EPA must find that the information is either (1) a trade secret; or (2) commercial or financial information obtained from a person and privileged or confidential (commonly referred to as “Confidential Business Information” (CBI)). EPA’s CBI regulations are located in 40 C.F.R. Part 2, Subpart B, and govern the treatment of information claimed as CBI in response to a FOIA request.

EPA Office of General Counsel is required to issue a final determination on the information claimed as CBI under 40 C.F.R. Part 2, Subpart B. Any initial denial based on Exemption 4 is automatically forwarded to the Office of General Counsel for a final confidentiality determination. 40 C.F.R. § 2.204(d). As part of this process, EPA must provide the businesses an opportunity to submit comments that address the substantive criteria of 40 C.F.R. § 2.208, particularly criteria (c) and (d). Once EPA receives the businesses’ substantiations, then the Office of General Counsel will complete a final administrative determination of whether the information is entitled to confidential treatment. 40 C.F.R. § 2.205. Therefore, any disclosure prior to this final confidentiality determination and the requisite notice period of § 2.205(f) for adverse determinations is inconsistent with the Agency’s regulatory requirements.

Prior to proceeding, EPA OGC would like to confirm your interest in proceeding with the substantiation and determination process outlined above. Please respond within 10 calendar days from the date of this email to confirm your continued interest in EPA issuing a final confidentiality determination on the withheld information. Please contact me at duffey.dylan@epa.gov to confirm your interest.

Lastly, because this FOIA request is categorized as a “commercial use request,” you will be charged fees associated with processing this confidentiality determination. After you confirm your continued interest, EPA will provide you with a fee estimate if the confidentiality determination fee estimate is greater than \$25.00, and you will be requested to provide a written assurance of payment, pursuant to 40 C.F.R. § 2.107(e). Please note that you will be responsible for the fees for processing the confidentiality determination regardless of whether information is determined to be releasable or not. My office will also provide an estimated completion date after we receive an assurance of payment.

If EPA does not receive a timely confirmation, then EPA will consider your request for the Exemption 4 information to be voluntarily withdrawn and close these files.

Thank you.

Dylan Duffey
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